

Senate Bill 133
January 13, 2010
Presented by Bob Lane
Senate Fish and Game Committee

Mr. Chairman and committee members, I am Bob Lane, Chief Legal Counsel of Montana Department of Fish, Wildlife & Parks (FWP). I am here to provide testimony in opposition to Senate Bill 133, as written.

FWP agrees with the sponsor, Senator Barrett, that persons participating in hunting, fishing, or trapping should not be harassed, threatened, or intimidated. However, FWP's review of SB133 identifies too many inadvertent consequences to justify supporting the bill as drafted.

Because information about a licensed hunter "may not be released or disclosed to any person", Department wardens would have a difficult, of not impossible, task of investigating and enforcing some of the key statutory requirements such as purchasing only one hunting license or tag, or purchasing a resident license only if you are a resident.

The Department would not be able to conduct hunter surveys which provide critical data informing management decisions.

The Department presently provides information to hunters in ways that are convenient and effective, such as lists on the internet of drawing success, bonus points for drawing, damage hunt roster status, and holders of hunter safety certificates. FWP would no longer be able to provide this service at least without redesigning its automated licensing system (ALS) by providing a personal log in for each individual license holder.

The Department presently provides a considerable degree of protection of a person's privacy. The Department does not release the social security number, age, date of birth, ALS number, phone number, employer, height, weight, and eye or hair color of any license holder in response to public inquiries. Also, FWP provides any license applicant the opportunity to opt out of mailing lists which the department is otherwise required by statute to provide to anyone making a request for the purpose of solicitations.

The Department recognizes and appreciates the sponsor's intentions to strengthen the hunter and fisher harassment statute. This statute was narrowly written in 1987 to regulate conduct, the physical interference with hunters rather than speech. Regulating speech, as the amendments in SB133 do, would unconstitutionally criminalize a substantial amount of speech protected by the 1st Amendment to the U.S. Constitution. The Montana Supreme Court, in overturning a state district court ruling, found the hunter harassment statute was constitutional because it regulates conduct for safety rather than impermissibly regulates speech or conduct based on the message conveyed.

The proposed amendments to the hunter harassment statute cross this constitutionally drawn divide and may undermine the presently strong constitutional footing of the entire hunter harassment statute.

For the above reason, FWP does not support SB133 because, while FWP agrees with the intentions of Senator Barrett, the bill is both unnecessary and inadvertently harmful.